

(2020) 09 CAL CK 0004

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) No. 1221, 1367 Of 2019

State Of West Bengal & Ors

APPELLANT

Vs

Anirban Ghosh & Ors

RESPONDENT

Date of Decision : 03-09-2020

Acts Referred:

West Bengal School Service Commission Act, 1997 — Section 9
West Bengal Schools (Control And Expenditure) Act, 2005 — Section 2(p), 4, 5, 7, 10
Constitution Of India, 1950 — Article 14, 21, 23(2), 39

Citation : (2020) 09 CAL CK 0004

Hon'ble Judges : Soumen Sen, J;Saugata Bhattacharyya , J

Bench : Division Bench

Advocate : Kishore Dutta, Joyotosh Majumder, Kakali Samajpati, Lakshmi Kumar Gupta, Arjun Ray Mukherjee, Partha Pratim Dutta, Soumen Kumar Dutta, Sourav Dutta

Final Decision : Allowed

Judgement

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The Court:- The direction for payment of salaries and other benefits to the writ petitioners equal to that of the regular scale of pay and at par with full-time permanent teachers of the concerned school by the judgment dated 4th July, 2019 has given rise to the present appeal.

Shorn of details, the Government of West Bengal, School Education Department, by a notification No. 219-SE (HS) 6A-5/01 dated 6th June, 2002, created 900 posts of part-time teachers for the Higher Secondary sections of the Higher Secondary Schools in West Bengal on a fixed pay of Rs. 2,000 per month on contract basis as part-time teachers to be filled by the Managing Committee/Ad-hoc Committee/Administrator of the Higher Secondary School, inter alia, on the following terms and conditions:

(i) The period of contract should be for one year with a provision for renewal with

a break.

(ii) The teaching load for such part-time teacher should be normally 10 periods per week and these posts are meant for up-gradation of Higher Secondary Schools.

By a subsequent notification dated 8th August, 2002, being Memo No. 642-1(2a)-SE (HS), the Director of School Education, Government of West Bengal, issued directions to different schools to take immediate steps to fill up the regular posts by bringing the matter to the respective School Service Commissions through the concerned District Inspector of Schools in strict compliance with the Reservation Rules (100 point roster) and all other rules and procedures, as framed by the Government from time-to-time. The posts sanctioned, meant for part-time (contract basis) teachers were also directed to be filled up simultaneously, as per the terms and conditions laid down in G.O. No. 219-SE (HS) dated 6th June, 2002. Following the aforesaid, the Director of School Education published guidelines for recruitment of part-time assistant teachers of recognised Non-Government Higher Secondary Schools/Madrasas in terms of G.O. No.1253-SE (S) dated 9th September, 2002. The said guidelines stated that all appointments would be made strictly according to the aforesaid guidelines and against such part-time teaching posts only which have been sanctioned by the School Education Department. All the candidates would be selected by the Selection Committee to be constituted in terms of the said guidelines. The appointments made on the basis of such guidelines would be purely on temporary and contractual basis and for a period of one year. The guidelines made it clear that before issuing the appointment letter the contract paper in the proforma prescribed by the Director of School Education would have to be signed by the candidate and the School Authority. All the candidates selected in terms of the aforesaid guidelines have signed the 'Proforma for appointment of part-time teacher in Higher Secondary Section on contractual basis', which contains the following terms and conditions:

1. The appointment of the part-time teacher would be purely temporary and on contractual basis for 1 (one) year with effect from the date of joining, provided his/her service in the institution is found satisfactory throughout this period of 1 (one) year on a fixed pay of Rs. 2,000/- (Rupees two thousand) only per month without any allowances. His/Her service would automatically be terminated on expiry of the period of 1 (one) year or, earlier, if his/her performance in the school is not found satisfactory and/or in violation of condition (2) below and as provided herein below.
2. The teaching load of the part-time teacher would normally be (10) ten periods per week and he/she would carry out his/her duties in the School/Madrassa as allotted to him/her.
3. During the vacation period also, the part-time teacher would get the consolidated pay as stated above.

4. He/she will not claim for an appointment on regular basis on expiry of his/her term.

5. His/Her appointment is terminable with 1 (one) month's notice on either side and before completion of the contractual period of 1 (one) year.

The terms and conditions indicated above were as prescribed in G.O. No. 219-SE (HS) dated 6th June, 2002 read with G.O. No. 1253-SE (S) dated 9th September, 2002. The letter of appointment clearly stipulates that the appointment would be purely on temporary and contractual basis. The teaching load of the part-time teachers would nearly be 10 periods per week and the teachers would not claim for payment on regular basis on expiry of their term. Thereafter, on 29th August, 2008, the School Education Department had taken a decision that for those Higher Secondary schools which were running with part-time contractual teachers since 2002, no additional posts should be sanctioned to such Higher Secondary Schools for the subjects taken care of by the part-time contractual teachers. The honorarium of the part-time teachers on contractual basis, however, was enhanced from time-to-time and at present we have been informed that the part-time teachers are receiving an honorarium of Rs. 13,000/- per month. On 25th February, 2009, while enhancing the emoluments of the part-time teachers to Rs. 6,000/- only per teacher per month with effect from 1st January, 2009, it was made clear that there will be no further appointment of any new part-time teacher (on contract basis) in Non-Government Higher Secondary Schools with effect from 1st April, 2007. The existing part-time teachers (on contract basis) were allowed to continue until further orders. Reference was also made to the fact that the expenditure to be incurred for such enhancement would be met out of the budget provision under the head of Account-2202-General Education-02-Secondary Education-110-Assistance to Non-Government Secondary Schools.

On 28th January, 2010 the Government issued an order, being No. 100-SE (S)/1S-37/09 to ensure that none of the part-time contractual teachers attached to Government-aided Higher Secondary schools be terminated or be released or have their contracts not renewed without obtaining the permission of the District Inspector of Schools (SE) concerned. By a subsequent Memo of 23rd April, 2010, while enhancing the honorarium to Rs. 8100/- with effect from 1st January, 2010, it was clearly stated that on attaining 60 years of age or winding up of this project the part-time teachers would be paid an ex-gratia retirement honorarium of Rs. 1 lakh only on lump sum basis. By a notification dated 23rd April, 2010, the Government issued a further order dated 9th June, 2010 by which it was made clear that no other allowances would be available to the part-time teachers attached to Non-Government Higher Secondary schools except the enhancement at the rate of 5% of the remuneration at every interval of 3 years, after the enhancement is done as on 1st June, 2010. These persons would remain engaged till they attained 60 years of age and the State Government would bear the expenditure. The benefit of 10 days casual leave and 10 days medical leave

was extended to the contractual part-time teachers by the Government Order dated 28th July, 2010 subject to the condition that the part-time teachers would have to take the same number of classes per week as like as the duties of a regular and full-time teacher. Some of the part-time teachers were also appointed as examiners by the West Bengal Council of Higher Secondary Education.

The writ petitioners, being aggrieved by the act of the appellants in not treating them as equal with the regular teachers, filed writ petitions. One of the writ petitioners, namely, Anirban Ghosh filed a writ petition for extending the benefit of equal pay for equal work in connection with the service of part-time teachers of Khandra High School (HS), District - Burdwan. The writ petition was disposed of by the Hon'ble Mr. Justice Kar Gupta, our former Chief Justice on 8th October, 2013 by directing the Secretary to the Government of West Bengal, School Education Department to take a decision in the matter by passing a reasoned order in accordance with law by 31st December, 2013 and to communicate the same to the petitioner by 15th January, 2014. In terms of the said direction, the Secretary, Government of West Bengal, School Education Department decided the matter against the petitioner. The authority concerned has observed that the service of the petitioner cannot be regularised as a permanent teacher. The petitioners were appointed on purely contractual basis in a part-time post only for Higher Secondary section of the schools and the State Government till date has not issued any order to regularise the appointment of part-time teachers against any permanent vacancy. The extension of 10 days casual leave and 10 days medical leave in a year to the contractual teachers as per G.O. No. 1176-SE(S) dated 28th July, 2010 does not imply that the part-time teacher shall be treated as a permanent teacher. The said Government Order was meant only for providing leave to the part-time contractual teachers who were willing to take classes regularly. The authorities relied upon Section 9 of the West Bengal School Service Commission Act, 1997 and Section 4 of the West Bengal Schools (Control of Expenditure) Act, 2005 to deny the claims of the writ petitioners. Being aggrieved by the said order, Mr. Anirban Ghosh along with Mr. Barun Kumar filed two separate writ petitions, being W.P. No. 14283 (W) of 2014 and W.P. No. 14319 (W) of 2014.

Both the writ petitions were heard together and disposed of by a common judgment.

The writ petition was decided without affidavits as, despite several opportunities being given to the appellants, none of the appellants/respondents appeared to contest the proceedings. The State and the other authorities did not appear in the matter since April, 2019. The learned Single Judge accordingly proceeded on the basis of the materials on record and the submissions made on behalf of the writ petitioners. The learned Single Judge allowed the writ petition on the principle of equal pay for equal work relying upon a recent decision of the Hon'ble Supreme Court being *State of Punjab & Anr. v. Jagjit Singh & Ors.*,

reported in 2017 (1) SCC 148. The relevant observations of the learned Single Judge in this regard are:-

'The principle of parity of pay scale considered in Jagjit Singh related to temporary employees performing the same duties and responsibilities as that of regular employees. The issue for consideration before the Supreme Court was whether Memorandum/regular 10 pay scale along with dearness allowance could be extended to temporary employees engaged on a daily-wage basis, Ad-hoc appointees, casual employees, contractual appointees and the like. After considering several decisions, the Supreme Court held that temporary employees possessing requisite qualifications and appointees against sanctioned posts and performing similar duties as that discharged by regular employees were entitled to claim wages at par with minimum pay scale of regular employees holding the same posts. Before considering whether the aforesaid principle fits into the facts of the present writ petitions, understanding what the principle "equal pay for equal work" entails is necessary.

12. The principle has been urged by employees who were appointed on a contractual or Ad-hoc basis and claimed a parity of pay scale to employees who were engaged on a regular basis against sanctioned posts. The underlying sense of entitlement of the employees before the Supreme Court, as has been discussed in the decisions, was the similarity of the scale of duties and responsibilities of contractual employees to those engaged in regular posts. In Jagjit Singh, the Supreme Court held that the onus of establishing similar parity in the duties and responsibilities of the subject posts with reference to the pay scale of the post aspired for, lay on the person who claims it. Further, the principle of "equal pay for equal work" would be applicable in cases of unequal scales of pay based on irrational classification or an absence of classification and the concerned employees should be performing work of the same quality and sensitivity as those with whom the comparison is sought to be made. This would mean that persons 11 holding the same designation but having dissimilar duties and responsibilities would naturally be excluded from claiming equal pay. It was also held that for placement in a regular pay scale, the claimant has to be a regular appointee (reference: Orissa University of Agriculture & Technology Vs. Manoj K. Mohanty; (2003) 5 SCC 188. A few cases where a claim for pay parity was accepted by the Supreme Court are Dhirendra Chamoli Vs. State of U.P.; (1986) 1 SCC 637, where it was held that the action of not paying the same wage despite the work being the same was violative of Article 14 of the Constitution of India. In Surinder Singh Vs. CPWD; (1986) 1 SCC 639, it was found that the right of equal wages claimed by temporary employees had its foundation in Article 39 of the Constitution (Article 39; "Certain principles of policy to be followed by the State").

The scope was widened in Bhagwan Dass Vs. State of Haryana; (1987) 4 SCC 634 where the Supreme Court held, inter alia, that the manner of selection and appointment or the duration of the appointment in temporary cases would make

no difference. The only relevant consideration according to the Supreme Court was whether an employee is required to discharge similar duties and responsibilities as regular employees and the concerned employee possesses the qualifications prescribed for the post. In *State of U.P. Vs. Putti Lal*; (2006) 9 SCC 337, *State of Haryana Vs. Charanjit Singh*; (2006) 9 SCC 321, *U.P. Land Development Corpn. Vs. Mohd. Khursheed Anwar*; (2010) 7 SCC 739, respectively, the Supreme Court declared that if the daily wage employees could establish that they were performing equal work of equal quality and all other relevant factors were fulfilled, a demand for payment of equal wages would be justified.

13. There have also been cases where the benefit of "equal pay for equal work" to temporary employees was declined by the Supreme Court. These include: *Harbans Lal Vs. State of H.P.*; (1989) 4 SCC 459, *Grih Kalyan Kendra Workers' Union Vs. Union of India*; (1991) 1 SCC 619, *State of Haryana Vs. Tilak Raj*; (2003) 6 SCC 123 and *State of Punjab Vs. Surjit Singh* (2009) 9 SCC 514 which were decided on the basis of the employees (petitioners before the court) not being able to establish that they were rendering similar duties and responsibilities as were being discharged by regular employees holding corresponding posts.' The learned Single Judge relied upon the supplementary affidavits filed by the writ petitioners to demonstrate that they are discharging the same duties and responsibilities as those of permanent/full-time teachers. The learned Single Judge held that the writ petitioners cannot be treated as separate and distinct class or said to be claiming benefits for a scale of duties which is outside the post and profile of the petitioners. The petitioners claim equal rewards compared to those who are rendering work equal in all respects to that of the petitioners. If the petitioners have been performing duties and responsibilities of the same weight, quality and sensitivity to that of full-time permanent teachers, denying equal pay to the petitioners would amount to treating equals as un-equals and such artificial parameters cannot be created between those who are equal in all respects. The learned Single Judge held that the action to withdraw the notification specifically providing that temporary teachers would perform the same duties as regular and full-time teachers is arbitrary and is not supported by reasons. On such consideration, the impugned orders dated 27th December, 2013 and 24th December, 2013 were set aside. The concerned respondents/appellants were directed to take steps for payment of salaries and other benefits to the writ petitioners equal to that of the regular scale of pay and at par with the full-time permanent teachers of the concerned school. This would be made effective from 27th April, 2007, which was the date of the order restraining any further appointment of any new part-time teachers on contract basis in Non-Government Higher Secondary Schools with effect from 1st April, 2007. This order is challenged before us.

The learned Advocate-General, appearing on behalf of the appellant, has submitted that the learned Single Judge has overlooked the fact that in order to apply the principle of 'equal pay for equal work', the process of recruitment for

the posts is an essential consideration as in the instant case the notification dated 8th August, 2002 and the guidelines dated 9th September, 2002 read with the appointment letter of each of the part-time teachers, make it abundantly clear that the posts sanctioned are for part-time teachers for Higher Secondary sections of Higher Secondary Schools, and are purely contractual in nature. The source of recruitment for the permanent teacher and part-time teacher is clearly discernable from the notification dated 8th August, 2002, where the Government had dealt with recruitments of permanent teachers through the mechanism of the School Service Commission and that of part-time teachers on contractual basis in terms of the guidelines dated 9th September, 2002 by Selection Committee to be constituted in the terms of the said guidelines. The appointment, service condition, pay scale and the recruitment procedure of the two sets of teachers is completely different. The part-time teachers knew that their tenure is temporary and renewable after one year. The teacher can only be appointed in a permanent post provided that there is a declaration of vacancy and against posts which are sanctioned by the Government. The creation of permanent posts has a financial implication. The learned Advocate-General has relied upon Sections 2(p), 4, 5, 7 and 10 of the West Bengal Schools (Control and Expenditure) Act, 2005 to demonstrate that regularisation of a teacher who has rendered service on any casual or part-time vacancy on contract or any other basis against any permanent teaching post cannot be done without previous sanction of the State Government. A part-time teacher cannot claim regularisation by reason of coming into force of the West Bengal School Service Commission Act, 1997 with effect from 1st November, 1997. In view of the Act of 1997, appointment to the post of teacher in a school can only be made on the recommendation of the School Service Commission, otherwise any appointment made in contravention of the provision of the said Act would be invalid and would have no effect and the teacher so appointed would not be a teacher within the meaning of sub-section (p) of Section 2 of the said Act.

Our attention is drawn to the definition of "Teacher" in Section 2(p) of the said Act of 1997, which reads:

"P. 'Teacher' means an Assistant Teacher or any other person holding a teaching post of a school and recognised as such by the Board or the Council or the Board of Madrasah, as the case may be, and includes the Headmaster or the Headmistress (but shall not include the Assistant Headmaster or the Assistant Headmistress or the Teacher Holding a post against short term vacancy caused by deputation, leave or lien)"

It is submitted that it would be clear from the said Act and the circulars and orders disclosed by the writ petitioners that the process of recruitment of part-time teachers is completely different from the full-time permanent teachers and, accordingly, the part-time teachers cannot claim equal pay. Moreover, our attention is drawn to a Government Order, being no. 772-Edn. (S)/188-8/74 dated 8th July 1974 to show that the teaching load for a permanent teacher

should normally be 36 periods per week as opposed to 22 periods per week which the writ petitioners alleged to have been taking in a week. This also goes to show that the work load of a permanent teacher and a temporary teacher is different. The learned Advocate-General has submitted that although the sheet anchor of the writ petitioners in claiming the relief is the judgment in Jagjit Singh (supra), but the said judgment also does not come to the aid of the writ petitioners as the subsequent decisions on this point upon noticing Jagjit Singh (supra) have made it clear that the person who has not gone through the process of recruitment may itself in certain case makes a difference like the present one. The learned Advocate-General has relied upon the paragraphs 117, 127 and 128 of State of Bihar vs. Bihar Secondary Teachers Struggle Committee, reported in 2019 SCC Online SC 722, which reads:

"117. Analysis of the decisions referred to above shows that this Court has accepted following limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work':-

- i) The doctrine of 'equal pay for equal work' is not an abstract doctrine.
- ii) The principle of 'equal pay for equal work' has no mechanical application in every case.
- iii) The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.
- iv) The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job.
- v) Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.
- vi) Granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.
- vii) Equation of posts and salary is a complex matter which should be left to an expert body.
- viii) Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.
- ix) Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.
- x) In a given case, mode of selection may be considered as one of the factors which may make a difference.

127. If a pay structure is normally to be evolved keeping in mind factors such as "method of recruitment" and "employer's capacity to pay" and if the limitations

or qualifications to the applicability of the doctrine of 'equal pay for equal work' admit inter alia the distinction on the ground of process of recruitment, the stand taken on behalf of the State Government is not unreasonable or irrational. Going by the facts indicated above and the statistics presented by the State Government, it was an enormous task of having the spread and reach of education in the remotest corners. Furthermore, the literacy rate of the State which was lagging far behind the national average was also a matter which required attention.

The advances made by the State on these fronts are quite evident. All this was possible through rational use of resources. How best to use or utilise the resources and what emphasis be given to which factors are all policy matters and in our considered view the State had not faltered on any count. As laid down by this Court in the decisions in Joginder Singh²⁸ and Zabar Singh²⁹, the State was justified in having two different streams or cadres.

The attempt in making over the process of selection to Panchayati Raj Institutions and letting the cadre of State Teachers to be a dying or vanishing cadre were part of the same mechanics of achieving the spread of education. These issues were all part of an integrated policy and if by process of judicial intervention any directions are issued to make available same salaries and emoluments to Niyojit Teachers, it could create tremendous imbalance and cause great strain on budgetary resources.

128. It is true that the budgetary constraints or financial implications can never be a ground if there is violation of Fundamental Rights of a citizen. Similarly, while construing the provisions of the RTE Act and the Rules framed thereunder, that interpretation ought to be accepted which would make the Right available under Article 21A a reality. As the text of the Article shows the provision is essentially child-centric. There cannot be two views as regards the point that Free and Compulsory Education ought to be quality education. However, such premise cannot lead to the further conclusion that in order to have quality education, Niyojit Teachers ought to be paid emoluments at the same level as are applicable to the State Teachers.

The modalities in which expert teachers can be found, whether by giving them better scales and/or by insisting on threshold ability which could be tested through examinations such as TET Examination are for the Executive to consider."

The learned Advocate-General has submitted that unless there is complete parity between the two posts they should not be treated as equivalent to claim parity of pay scale. If the source and mode of recruitment is different parity in pay scale cannot be claimed. Moreover, the financial implication is a relevant factor for accepting the revision of pay. It is submitted that since the source and mode of recruitment are different as well as the nature of responsibilities, the claim of the writ petitions for equal pay cannot be allowed. Unless they are duly selected and appointed as regular teachers they cannot claim pay parity. In this regard

reliance has been placed on the following decisions.

- 1) State of Haryana & Ors. v. Charanjit Singh & Ors. reported in 2006 (9) SCC 321 (paragraph 22, 23)
- 2) S.H. Baig & Ors. v. State of Madhya Pradesh & Ors., reported in 2018 (10) SCC 621, (paragraph 18)
- 3) Punjab State Power Corporation Ltd. v. Rajesh Kumar Jindal & Ors., reported in 2019 (3) SCC 547 (paragraph 39)
- 4) Punjab State Electricity Board & anr. v. Thana Singh & Ors., reported in 2019 (4) SCC 113. (paragraphs 20 to 23) The learned Advocate-General has further submitted that the post of part- time teacher is not considered as a teaching post under the West Bengal Schools (Control of Expenditure) Act, 2005 and the appointments were not made in terms of the West Bengal School Service Commission Act, 1997 or the Act of 2005. The appointment was only contractual. Under such circumstances, claim for equal pay for equal work is not maintainable. In this regard reliance is placed on Apangshu Mohan Lodh & Ors. v. State of Tripura & Ors., reported in 2004 (1) SCC 119.

Lastly, it is submitted that the writ petitioners have accepted the appointment as contractual and have consciously signed the appointment letter. It is not now open for them to challenge the nature of appointment as contractual. In this regard reliance is placed on State of Maharashtra & Ors. v. Anita & Anr., reported in 2016 (8) SCC 293.

Mr. Joytosh Mazumder, the learned Government Pleader supplemented the argument of Mr. Advocate General. Mr. Mazumder has emphasised that the writ petitioners at the relevant point of time were taking classes in Higher secondary sections of additional subjects and of various other subjects in the secondary sections. Mr. Mazumder submits that the writ petitioners could not have taken classes for the normal sections (Class - V to Class-X) and their nature of duty does not come nearer to that of the regular teachers.

Per contra, Mr. Lakshi Kumar Gupta, Senior Advocate, has submitted that the writ petitioners, although appointed on a temporary basis on 11th January, 2003 has been discharging his work as a teacher uninterruptedly and continuously till date and has been discharging the same work as that of a permanent regular teacher. The teachers were appointed for a fixed tenure against permanent posts, but subsequently their appointment was made to continue till their attaining 60 years of age and hence they cannot be treated as contractual teachers. In such circumstances, describing these teachers as contractual teachers is a contradiction in terms. The workload of the petitioner is no less than that of the regular teacher inasmuch as the petitioner has been assigned with works that are usually assigned to a permanent regular teacher like that of being an examiner and scrutinizer for the West Bengal Council of Higher Secondary Education for the subject of Economics on 26th December, 2013.

It is submitted that the respondents have taken a policy decision not to appoint any additional teachers for some of the Higher Secondary Schools which were running with part-time contractual teachers since 2003 with no additional posts being sanctioned to such Higher Secondary Schools for the subjects taken care of by the part-time contractual teachers meaning thereby that the Government has stopped the recruitment process of the full time teacher on permanent basis as the performance of the contractual part-time teachers was found to be satisfactory and at par with regular teachers already appointed. The very fact that the services of these contractual teachers were continued uninterruptedly shows that they were found to be indispensable. Our attention is drawn to the letter dated 28th July, 2010 in which the Joint Secretary to the Government of West Bengal Education Department has communicated his decision to sanction ten days casual leave and ten days medical leave to the part- time contractual teachers attached to different Government-aided/sponsored Higher Secondary schools under the Directorate of School Education, Government of West Bengal, subject to the condition that they have to take equal number of classes per week like the duties of regular and full time teachers.

Mr. Gupta submits that this communication itself shows that the contractual teachers were taking equal number of classes per week as that of the regular full time teachers.

It is submitted that the writ petitioner is a teacher of Economics in standards 11 and 12 at Khandra High School and is taking 22-26 classes per week in terms of the Government Order dated 29th August, 2008 as no additional teacher was sanctioned by the Government for the subjects which have contractual teacher posted. Our attention is drawn to paragraph 6 of the supplementary affidavits filed by the writ petitioner in which it has been stated:

"That the said school has a total number of 1193 students for this academic year reading in standards 5 to 12, and for the same the requirement as per Government circular dated 08.07.1975 was 27 teachers and at present in terms of government circular dated 05.03.1998 is 15 teachers".

It is submitted that the school has a sanctioned strength of 11 permanent teachers for standards 5 to 12. There is a shortfall of 16 teachers as per the circular dated 8th July, 1975. Furthermore, none of the other teachers can take the class of Economics on the basis of their academic qualifications.

Mr. Gupta has drawn our attention to the order dated 8th October, 2013 passed in the earlier petition in which the Secretary of the Government School Education Department was directed to take a decision with regard to the prayer made by the petitioner for equal pay for the equal work and the order passed by the Secondary Education on 27th December, 2013.

It is submitted that the authority has completely ignored the issue regarding the claim of equal pay by shutting its eyes to the ground situation of the number of classes the writ petitioner has to necessarily take in the interest of the students,

as was realized by the respondent authorities while issuing the order being G.O. 1176-SE(S)/1S-37/09 dated 28th July, 2010.

It is submitted that the chart disclosed in the supplementary affidavit showing allotment of classes would clearly demonstrate that the writ petitioner was discharging duties by taking equal number of classes akin to the permanent full time teachers.

The learned Senior Counsel submits that the selection of candidates was done by following the elaborate Guideline framed by the State for this special recruitment drive undertaken with a special object as would appear from Government order no.219-SE(HS)-16A-5/01 dated June 6, 2002. It is submitted that the authority felt great difficulty in overcoming the G.O. No. 1176-SE(S) dated 28th July, 2010 which required such teachers to take the same number of classes as the permanent teachers do. In an attempt to wriggle out of this difficulty the said authority has withdrawn the said G.O., knowing fully well that such withdrawal is only paper work. The so-called contractual part-time teachers will have to continue taking the same number of classes as the regular teachers as they have been doing since at least September 2008, that is, after issuance of the Government Order No. 1757(20) GA dated 24.08.2008 when additional appointment of teachers was stopped in respect of the subjects being taught by teachers like the petitioner. The petitioner is entitled in law to get the same treatment regarding pay and all other service benefits as are being enjoyed by the permanent teachers recognised as such by applying the ratio laid down in *Bhagwan Dass vs. State of Haryana and Ors.*, 1987 (4) SCC 634; *Jaipal and Ors. vs. State of Haryana*, 1988 (3) SCC 354; and *State of Punjab and Ors. vs. Jagjit Singh*, 2017 (1) SCC 148, no matter whether the mode of appointment is different.

The grievance of the petitioners finds support from Article 23(2) of the Constitution as they are being exploited by making them work full time and denying equal pay which was a factor considered in *Jagjit Singh (supra)*. The case of *Jagjit Singh* considers claim of daily wagers / contractual employees having no permanence of service. Indisputably the situation of claimants given permanence in service was not the subject matter as in the instant matter the appointment of the petitioners is not a backdoor entry but by following a selection process at state level, however, the initial appointment was on contractual basis but subsequently the same was made permanent and the petitioner's status ceased to be merely contractual. This situation did not come up in *Jagjit Singh's* case. The petitioner qualifies the required standard mentioned in paragraph 42.5 of *Jagjit Singh's* case for claiming equal pay. Requirement of being regular appointees as mentioned in paragraph 42.6 of *Jagjit Singh's* case was accepted by the Government in course of time by making the petitioner permanent by stopping appointment of additional teachers and by requiring the petitioner to take equal number of classes. In *Jagjit Singh's* case, court found that all conditions for grant of equal pay were satisfied, however, court only

allowed minimum pay.

Mr. Gupta has submitted that the question of equal pay for equal work is distinct and separate from the question of regularization. Even if regularization cannot be granted equal pay cannot be denied. Mr. Gupta has submitted that these teachers have been rendering their service uninterruptedly and sincerely for almost 17 years but they have been deprived of their legitimate dues. The State cannot act arbitrarily and indulge in unfair exploitation of teachers.

On the basis of the aforesaid submission we have to assess the merits of the order passed by the learned Single Bench.

The undisputed fact that has emerged from the pleadings and the submissions made on behalf of the parties is that the Government by notification dated 6th June, 2002 sanctioned 900 posts of part-time teachers on contractual basis. The part-time teachers would be required to take 10 periods per week and carry out their duties in school as allotted to them. During vacation, they would get consolidated pay of Rs. 2000/- per month without any allowance. They would not claim appointment on regular basis on expiry of their tenure and their appointment would be terminable on one month notice on either side and before completion of the contractual period of one year. These terms are contradistinguishable from the posts filled up through the respective School Service Commission vide notification dated 8th August, 2002 for the purpose of filling up the regular posts of teachers following the Reservation Rules (100 point roster) and all other rules and procedures, as framed by the Government from time-to-time. The honorarium of the part-time teachers on contractual basis was, however, enhanced from time-to-time and presently the part-time teachers are receiving an honorarium of Rs. 13,000/- per month. The Government, perhaps, was satisfied with the performance of the part-time teachers, who were appointed for up-gradation of Higher Secondary Schools as is discernible from the notification dated 25th February, 2009. The Government, while enhancing the emoluments of the part time teachers to Rs. 6,000/- only per teacher per month with effect from 1st January, 2009, made it clear that there would be no further appointment of any new part-time teacher (on contract basis) in Non-Government Higher Secondary Schools with effect from 1st April, 2007. The existing part-time teachers (on contract basis) would continue until further orders. On 28th January, 2010, the Government issued an order to ensure that none of the part- time contractual teachers attached to Government-aided Higher Secondary Schools would be terminated or be released or their contracts renewed without obtaining the permission of the District Inspector of Schools (SE) concerned. By a subsequent Memo of 23rd April, 2010, while enhancing the honorarium to Rs. 8,100/- with effect from 1st January, 2010, the Government protected the service of the contractual teachers by securing their age of retirement at 60 years of age and clarified that on attaining 60 years of age or winding up of this project, they would be paid an ex-gratia retirement honorarium of Rs. 1 lakh only on lump sum basis. By a subsequent notification

dated 23rd April, 2010, the Government issued a further order dated 9th June, 2010, by which it may be clear that no other allowances would be available to the part-time teachers attached to non- Government Higher Secondary Schools except the enhancement at the rate of 5% of the remuneration at every interval of 3 years, after the enhancement was done as on 1st June, 2010. The service of the teachers would remain protected till they attained 60 years of age and the State Government would bear the expenditure. The benefit of 10 days casual leave and 10 days medical leave was extended to the contractual part-time teachers by the Government Order dated 28th July, 2010 subject to the condition that the part-time teachers would have to take the same number of classes per week as like the duties of a regular and full-time teacher. The documents reveal that the part-time teachers were also appointed as examiners by the West Bengal Council of Higher Secondary Education and assigned the duties and responsibilities which regular teachers would be expected to perform.

The sequence of events from 6th June, 2002 till 28th July, 2010 would demonstrate that the service of the contractual teachers were considered to be indispensable and their services were retained and secured up to 60 years of age with some benefits extended to them which are available to permanent teachers. The appointment of the teachers, as it stands, has now become a tenure based appointment up to 60 years with some facilities of a regular teachers being extended to these part time teachers.

The writ petitioners have filed supplementary affidavits which disclosed the nature of their duties in their respective schools. The Head Master of the concerned schools has issued statements disclosing the number of classes per week the writ petitioners take from academic session 2007-08 to 2020. The statements of the respective Head Masters and Head Mistresses would clearly demonstrate that in addition to the duties that the said writ petitioners discharged, they take equal number of classes per week as like the duties of regular and full-time teachers of both normal and Higher Secondary School in terms of order No. 1176-SE(S)/IS-37/09 dated 28th July, 2010 of the Joint Secretary, Government of West Bengal School Education Department, Secondary Branch with effect from 28th July, 2010.

The nation can only progress if the people are educated not in the sense of running riots in their brains but respect for human values and scientific bent of mind. The teachers can contribute significantly towards developing such values and make them creative, intuitive and rational. It would be suicidal for a society to belittle the dignity of the teachers or to treat them unfairly. Every teacher whether contractual or regular is a teacher. If a contractual teacher performs same and/or similar duty that of a regular teacher, irrespective of source of recruitment the teacher concern can legitimately make a claim for minimum basic pay that his counterpart is receiving from the Government towards his salary. Unlike a contractual teacher as commonly understood, it is a tenure based appointment with certain facilities and to that extent it is not at par with ad hoc

appointees or contractual appointees on a year to year basis.

In the given facts and circumstances of the case, it cannot be denied that the writ petitioners have performed their duties with sincerity and largely contributed and assigned the effort of the Government for up-gradation of the Higher Secondary Schools. The writ petitioners are performing the duties of the regular teachers both in the normal and Higher Secondary section. Even if they are not recruited through the School Service Commission but their appointment is neither illegal nor irregular. The appointment is now of a fixed tenure.

The learned Single Judge was influenced by the decision of the Hon'ble Supreme Court in Jagjit Singh (supra). In paragraph 44 to 46.10 of the said judgment, the Hon'ble Supreme Court discussed all the judgments on the concept of equal pay for equal work till that date and, upon noticing the discordant note in State of Haryana vs. Jasmir Singh, reported in 1996 (11) SCC 77, observed that having regard to a large number of judgments, some of which were of the larger Benches, the benefit of the principle in question was extended to temporary employees (including daily wagers). Therefore, the views in Jasmir Singh (supra) could not be accepted. It was irreconcilable and inconsistent with the large number of judgments on this point.

The later judgment relied upon on behalf of the appellant does not dilute the ratio in Jagjit Singh (supra). Jagjit Singh (supra) has considered a large number of cases where a claim for pay parity raised by the hands of the temporary employees was accepted by the Apex Court by applying the principle of equal pay for equal work with reference to the regular employees. Our Constitution envisages the State to be a welfare state. The social contract theory is the precursor to the modern theory of democracy. Inspired by the philosophy of Hobbes, Mill and Bentham, the framers of the Constitution had conceived the State to be a welfare socialist egalitarian State. Discrimination on any ground is against the concept of fairness. Forced labour is strictly prohibited. It is the duty of the State to prevent exploitation of people at all level. The person who is required to perform a perennial job should not be deprived of at least the benefits of equal wages that a regular employee earns for doing the same kind of job. Artificial break in the service with a view to deprive a legitimate claim has been deprecated in a large number of decisions. However, all jobs may not be perennial and the Government may create a post for a particular project, and the job seekers, with their eyes wide open when accept such employment, cannot, thereafter, claim regularisation on the completion or fulfilment of the projects. The principle of equal pay for equal work flows from Article 14 and 21 of the Constitution. The State cannot create a stratagem or a cloak under the garb of temporary employment to perpetrate and perpetuate exploitation. Inequality is an anathema to the constitutional right of equality.

In the instant case, as mentioned earlier, the writ petitioners were appointed to facilitate upgradation of the school to Higher Secondary Section and had discharged their job flawlessly, diligently and to the satisfaction of all the

authorities. The documents disclosed in the supplementary affidavits clearly support our conclusion. In fact, the Government also ensured their employment till they attain the age of 60 years with certain benefits extended to them which are available to regular teachers. A welfare state committed to a socialist pattern of society cannot deprive its teachers, who are in fact the backbone of the society, of their legitimate claims. The writ petitioners are not claiming regularisation. In fact, having regard to the process of recruitment involved in the instant case the writ petitioners knew that it is not possible for them to seek regularisation, instead they prayed for an honourable settlement of their legitimate dues. We are satisfied that the writ petitioners are discharging the same duties and responsibilities that of regular teachers for the period to be stated hereinafter. Although a regular teacher may perform additional job than a part-time teachers and the source and mode of these recruitment are different, but it cannot be overlooked that these part time teachers cannot be denied at least payment of salaries equal to the basic pay of their counter-part particularly in view of the decision of the School Education Department that there shall be no sanction of any additional post for Higher Secondary Schools which were running with part- time contractual teachers since 2002 with effect from April 1, 2007.

The State has not been able to demonstrate that the duties and responsibilities of the writ petitioners are different from that of the regular teachers. The very fact that the writ petitioners were and have been performing their duties since their initial date of appointment in 2003 uninterruptedly till date only speaks volumes of the contribution that they made for upgradation of school to a Higher Secondary school. The appellants have also recognised their efforts for such upgradation and secured their employment till they attain 60 years of age. Fairness requires that the State should extend at least some benefits if not all to these teaches, in parity, with the pay and benefits extended to a regular assistant teacher for the period as stated above.

The country needs dedicated teachers. The teachers deserve better treatment, security and standing in the society. The schools, colleges and universities require proper infrastructure and an environment conducive to learning. The society expects the teachers to devote more time in school, colleges and universities rather than in private tuitions and private tutorials mushrooming all over the country charging exorbitant fees.

We have given our anxious consideration raised by the learned Advocate General and the Government Pleader with regard to the eligibility of the writ petitioners to claim parity in payment. On the basis of the documents on record particularly pages 334 to 340 in MAT No. 1221 of 2019 and at page 25 of the supplementary affidavit affirmed by Barun Kumar Ghosh on 21st February, 2020, it appears that the writ petitioners have been taking classes on a regular basis since 2010 in their respective schools and the nature of the duties as disclosed in the supplementary affidavit, clearly justify a minimum claim for basic pay that their counterparts are receiving at least from January 2010 till the date of withdrawal

of the G.O. dated 28th July, 2010 vide memo dated 24th December, 2013.

While appraising the rival contentions on the factual aspect of rendering extent and nature of duty by the writ petitioner we cannot shut our eyes to the G.O. No. 1176-SE(S) dated 28th July, 2010 which is reproduced below:

"Government of West Bengal

School Education Department

Secondary Branch

Bikash Bhawan, Salt Lake, Kolkata - 91.

No.

1176-SE(S)/1S-37/09

Dated

Kolkata, the 28th July, 2010

From : Sri. T.K. Adhikari Joint Secretary to the Govt. of West Bengal.

To : The Director of School Education, West Bengal, Bikash Bhawan, 7th Floor, Salt Lake, Kolkata - 91.

Sub : Sanction of 10 days C.L. and 10 days Medical Leave in respect of contractual part-time teachers attached to Non-Govt. Higher Secondary Schools under Directorate of School Education, Govt. of West Bengal.

The undersigned is directed to say that after careful consideration, the Governor has now been pleased to accord sanction of 10(ten) days casual leave and 10 (ten) days Medical Leave to the part-time contractual teachers attached to different Govt. aided/Sponsored Higher Secondary Schools under the Directorate of School Education, Govt. of West Bengal subject to the condition that they have to take equal number of classes per week as like as the duties of regular and full time teachers.

2. This order issues with the concurrence of the Finance (Audit) Deptt.'s U.O. No. 1151 Gr. P (Service) dt. 10.06.2010.

3. All concerned may kindly be kept informed immediately.

Sd/- T.K. Adhikari,

Joint Secretary

No.

1176/1(4)-SE(S)

Kolkata, the 28th July, 2010"

We are aware of the fact that subsequently the said G.O. dated 28th July, 2010 was withdrawn by the Secretary, School Education Department, Law Branch vide issuing memo No. 1541/SE(Law)/SL/5S-615/2013 dated 24th December, 2013. The issuance of said memo dated 28th July, 2010 extended the benefit of 10

days' casual leave and 10 days' medical leave to the part-time contractual teachers attached to different government-aided/sponsored higher secondary schools with a rider that they were required to take equal number of classes per week as attended by the regular and full-time teachers. Insertion of this condition unleash implied approval by the School Education Department, Secondary Branch, to permit the contractual teachers to take equal number of classes per week as taken by the approved teaching staff in a government-aided secondary school till the date of withdrawal of the said G.O. dated 28th July, 2010 vide memo dated 24th December, 2013.

It is also discernable from the G.O. dated 28th July, 2010 and the subsequent memo dated 24th December, 2013 whereby the previous G.O. dated 28th July, 2010 stood withdrawn that the contractual teachers were eligible and permitted to perform similar job as that of approved teaching staff and could take equal number of classes like the permanent approved teachers.

But for the period earlier to 2010 we are unable to arrive at a definite conclusion on the basis of the materials on record that the writ petitioners have discharged same and/or similar duties of a regular teacher in the respective institutions. However, it is left open to the writ petitioners to apply before the Secretary (School Education Department) in justification of basic pay for the period from 2007 to 2009 demonstrating discharge of similar duties that of a regular teacher for the said period. Mr. Gupta has made a passionate argument with regard to the entitlement of the writ petitioners post 24th December, 2013 by which previous Government Order dated 28th July, 2010 was withdrawn. Mr. Gupta has submitted that in view of the disclosure made in the supplementary affidavits showing that the writ petitioners have been discharging duties similar to that of the regular teachers notwithstanding the memo dated 24th December, 2013 the Government as a model employer should extend suitable benefits to the teachers who are sincerely and devotionally performing their duties. Although our heart is with the writ petitioners but in the given facts we cannot interfere with the policy decision of the government as it has financial implications and the purpose and object of appointment of contractual teachers are significantly different from that of the regular teachers. However, at the same time we feel that the writ petitioners should not be the victim of exploitation in a socialist republic and the Government may consider upgradation of the service conditions of the writ petitioners based on record since it cannot be denied that the schools have been benefited by the services rendered by the writ petitioners for more than a decade.

Under such circumstances, we modify the order of the learned Single Judge by directing the appellant to make payment of salaries equal to basic pay in the scale of pay of a regular teacher working in Higher Secondary Section in a Non-Government Aided Higher Secondary School with effect from 28 July, 2010 being the date of the order which is quoted above till 24.12.2013 when the previous G.O. dt. 28th July, 2010 stood withdrawn under G.O. dt. 24.12.2013. The said Government order restrain any further appointment of any new part time

teachers on contract basis in non-government aided higher secondary school with effect from 1st April, 2007. The arrear salary shall be paid positively within four weeks from date. In the event, the writ petitioners made a representation before the Secretary (School Education Department), in justification of basic pay for the period from April 2007 till December 2009 and after 24th December 2013 demonstrating discharge of similar duties, within a period of 4 weeks after the lockdown is relaxed and the normal functioning of the schools and colleges are restored, the Secretary, shall consider such representation within a period of 3 weeks thereafter upon giving an opportunity of hearing to the writ petitioners as well as concerned schools. The representations can be sent in the designated email of the Secretary in addition to hard copies. Ms. Kakali Samajpati, learned advocate appearing for the appellant shall furnish such email address to Mr. Partha Pratim Dutta Advocate and Mr. Sourav Dutta, Advocate respectively being the learned advocate for the writ petitioners within one week from date. It is needless to mention that Covid protocol in place on the date of hearing shall be strictly followed. The school authorities shall be under an obligation to produce the attendance register and the class routines for the aforesaid period before the Secretary (School Education Department) along with any other materials as may be directed in order to enable the Secretary (School Education Department) to decide the claim of the writ petitioners. It is needless to mention that the Secretary shall be guided by the principle laid down in this order and shall not deny the claim of the petitioners merely because of their initial contractual appointment in view of the fact that the school education department had taken a decision not to sanction any additional post for these higher secondary schools which were running with part time contractual teachers since 2002 with effect from April 1st, 2007. The Secretary shall pass a reasoned order which shall be communicated to the writ petitioners and the concerned schools within two weeks from the date of the order. The order may be communicated at email address of the writ petitioners & their advocates to be provided by the parties while forwarding the representations in addition to hard copies.

The Government as a model employer may also sympathetically consider if some more benefits that are available to the regular assistant teachers could be extended to the writ petitioners till they attain 60 years.

The appeal succeeds in part.

In the facts and circumstances of the case there shall be no order as to costs.